constitutional method whereby the advantage of the non-partisan board or commission may be secured without proscribing the members of any political party from the privilege of holding office.

The second class of cases to which *State* v. *Sargent,* supra, belongs, involves a type of statute requiring that the board shall be composed of the members of the two leading political parties. Such a qualification for office is arbitrary, and bars all except the specified classes from holding office. The courts have decided differently as to the constitutionality of such statutes. *State* v. *Sargent,* supra, and *Commonwealth* v. *Plaisted,* 148 Mass, 375, 383, 387, are the only cases which the writer has been able to find that uphold the constitutionality of this type of statutory provision. The following cases are contra: *Mayor* v. *State,* 15 Md., 376;*Att'y Gen.* v. *Board of Councilmen,* 58 Mich. 213, 55 Am. Rep. 675; *Evansville et al.* v. *State,* 118 Ind. 426; *State* v. *Denny,* 118 Ind. 449, 4L. R. A. 65, 78; *Rathbone* v. *Worth,* 150 N. Y. 459, 34 L. R. A. 408; *People* v. *Hurlbut,* 24 Mich. 44, 9 Am. Rep. 103.

The arbitrary prohibition of any class of citizens from holding office upon the basis of political opinion, no matter what the motive of the legislature may be, is vicious and fundamentally in conflict with the inherent nature of a republican form of government secured by the constitution. COOLEY, CONST. LIM, ed. 7, p. 556. It is admitted that where "the constitution does not prescribe the qualifications, it is the province and the right of the legislature to declare upon what terms and subject to what conditions the right to hold office shall be conferred." MECHEM, PUB. OFF., § 66. Yet some powers are limited by the general frame work of the constitution. Constitutional freedom "consists in civil and political rights, which are absolutely guaranteed, assured, and guarded; in one's liberties as a man and a citizen—his right to vote, his right to hold office, his right to worship God according to the dictates of his own conscience; his equality with all others who are his fellow citizens; all these, guarded and protected, and not held at the mercy and discretion of one man or of any popular majority." *State* v *Hurlbut,* supra. If the legislature may arbitrarily exclude all but the members of two political parties from holding office, it is able to confine the right to the adherents of one party. Then, in legal theory are our state governments republican only through the indulgence of the Legislature? Mr. Justice WEAVER'S answer to this question in the principal case is worthy of careful consideration.

H. W. I.

PROXIMATE CAUSE.—The steamer Santa Rita, while lying beside the wharf at Oakland, California, discharged a quantity of fuel oil from her hold into the bay. The wharf by some independent means caught fire and damaged part of a vessel lying beside the wharf. The oil in the bay was ignited and did further damage to the vessel. The owner of the vessel libelled the Santa Rita to recover damages. (A statute of California makes it a misdemeanor to discharge fuel oil into the waters of any navigable bay in the state.) It was held that the act of the Santa Rita was not the proximate cause of the injury and that she was not liable. *The Santa Rita* (1909), — D. C., N. D., Calif. —, 173 Fed. 413

The definitions of proximate cause are easily given in general terms, but they are very difficult of practical application to the facts of each particular case. *Anderson* v. *Miller,* 96 Tenn. 35. General formulas have been frequently stated, but these have carried us but little, if any, beyond the meaning conveyed by the words of the maxim—*Causa proxima, et non remota spectatur.* It is easy to illustrate, but hard to define what is an immediate and what a remote cause. The Supreme Court of Pennsylvania in the case of *Hoag* v. *L. S. & M. S. R. Co.,* 85 Pa. 293, laid down the rule that the injury must be the natural and probable consequence of the negligence—such a consequence as, under the surrounding circumstances of the case, might and ought to have been foreseen by the wrongdoer as likely to flow from his act. *Enlow* v. *Hawkins,* 71 Kan. 633, 81 Pac. 189; *Am. Nat. Bank* v. *Morey,* 113 Ky. 857, 69 S. W. 759, 24 Ky Law Rep. 658, 58 L. R. A. 956, 101 Am. St. Rep. 379; *Logan* v. *Wabash R. Co.,* 96 Mo. App. 461, 70 S. W. 734; *Peters* v. *Johnson,* 50 W. Va. 644, 41 S. E. 190, 57 L. R. A. 428, 88 Am. St. Rep. 909; *McDonald* v. *Snelling,* 14 Allen 29; *Barron* v. *Eldridge,* 100 Mass. 455; *Kellog* v. *C. & N. W. R. Co.,* 26 Wis. 223, 278; *Seale* v. *G. C. & S. F. R. Co.,* 51 Tex. 274. 16 AM. & ENG. ENCYC. OF LAW, Ed. 2, p. 436, defines proximate cause more broadly as that cause which in a natural and continuous sequence, unbroken by any efficient, intervening cause, produces the results complained of, and without which that result would not have occurred. *Milwaukee Etc. R. Co.* v. *Kellog,* 94 U. S. 469; *Watson* v. *Rheinderknecht,* 82 Minn. 235, 84 N. W. 798; *Davis* v. *The Holy Terror Min. Co.,* 20 S. D. 399, 107 N. W. 374; *Kuhn* v. *Jewett,* 32 N. J. Eq. 647; *Western R. Co. of Ala.* v. *Mutch,* 97 Ala. 194, 11 South. 894; *Bosqui* v. *Sutro R. Co.,* 131 Cal. 390, 63 Pac. 682; *Liming* v. *R. Co.,* 81 Iowa 246, 251, 47 N. W. 66.

It is difficult in many cases to tell which rule the courts of a state follow. The New York courts are in hopeless conflict on this question, sometimes laying down one rule and sometimes another. The fundamental difference between the rules does not seem to be so much in the rules themselves as in the construction and application of them. It is upon the question of what consequences are the natural and probable result of the wrongful act, or might have been anticipated as such that the decisions diverge, and, in many cases become irreconcilable with each other. Some cases appear to be disposed of on the ground that the act complained of is not the proximate cause of the injury, where the real ground of the decisions seems to be that the act in question is not negligent. See *Missouri Pac. Co.* v. *Columbia,* 65 Kan. 390, 69 Pac. 338, 58 L. R. A. 399; *Murphy* v. *New York,* 89 App Div. 93, 85 N. Y. S. 445; *Scott* v. *Ry. Co.,* 172 Pa. St. 646, 33 Atl. 712; *Christianson* v. *Ry. Co.,* 67 Minn. 94, 69 N. W. 640. What character of intervening act will break the causal connection between the original wrongful act and the subsequent injury is also many times left in doubt. The current of authority seems to be that if the intervening cause and its probable or reasonable consequences be such as could reasonably be anticipated by the original wrong doer, then the connection is not broken. *Scott* v. *Shepherd,* 2 W. Bl. 892 (Squib Case); *Kellogg* v. *C. & N. W. R. Co.,* supra. Although in strict logic it may be considered that he who is the cause of an injury should be answerable for all

losses which follow from his causation, yet in the practical workings of society the law finds in this, as in a variety of other matters, that this rule of law would be unjust in some cases and in many more impracticable of operation, and herein lies one of the chief distinctions between the effect of the two rules. The distinction may be illustrated also by the use of two cases, *Hoag* v. *L. S. & M. S. R. Co.*, 85 Pa. 293, and *Kuhn* v. *Jewett*, 32 N. J. Eq. 647. In the first case defendant's train ran into a slide of earth and stone and was wrecked, an oil car burst, the oil was ignited, floated down a stream near the tracks and set fire to plaintiff's building. The court said: "A man's responsibility for his negligence and that of his servant must end somewhere. An admittedly correct principle may be extended so as to reach the *reductio ad absurdum*, so far as it applies to the practical business of life." The court held the defendant's negligence was not the proximate cause of plaintiff's loss. In the New Jersey case, there was a wreck on the defendant's road due to its negligence, an oil car burst, the oil was ignited, ran into a stream and was carried down the stream to plaintiff's buildings which were burned. The court in this case allowed the plaintiff to recover. "Causal connection only ceases when, between the negligence and the damage, an object is interposed which would have prevented the damage, if due care had been taken. In keeping up continuity between cause and effect, water may be just as certain and effectual in its operations as the wind or any other material force." The Pennsylvania case holds that the plaintiff's loss would not have been foreseen by an ordinarily prudent man as the natural and probable consequences of his negligence. The New Jersey case holds that the stream does not break up the continuity of cause and effect and therefore is not a sufficient intervening cause. The consequences which actually did ensue need not, however, of necessity have followed from the defendant's acts. *Byrne* v. *Wilson*, 5 I. R. C. L. 332; *Clifford* v. *R. Co.* 9 Colo. 333; *Dickson* v. *Hollister*, 123 Pa. St. 421; *Vandenburgh* v. *Truax*, 4 Denio (N. Y.) 464, 467; but see *Laidlaw* v. *Sage*, 158 N. Y. 73, 99, in which the court says,—"A proximate cause is one in which is involved the idea of necessity. This idea of necessity—the necessary connection between the cause and effect—is the prime distinction between the proximate and a remote cause." Some courts have even gone so far as to hold that an intervening cause to excuse the defendant must be shown to be culpable and that if innocent it is no defense, but this is contrary to the weight of authority. *McKelven* v. *London*, 22 Ont. Rep. 70; *Lewis* v. *Terry*, 111 Cal. 39 (folding bed case); *Chacey* v. *Fargo*, 5 N. Dak, 173. The case of *Drum* v. *Miller*, 135 N. C. 204, 47 S. E. 421, 102 Am. St. Rep. 528, offers a solution for the use of these two rules,—In case of an injury inflicted in the performance of a lawful act, the natural and probable consequence rule should apply, but where the act causing the injury is itself unlawful or is at least a willful wrong, the third intervening cause rule should be the test, and this may be the explanation of the apparent confusion in many of the states.

In the principal case, the court, after laying down the different rules as to proximate cause, adheres to the natural and probable consequence theory. "A man of ordinary prudence and foresight would not have thought, in view

of all the surrounding circumstances, that fuel oil, if discharged into the waters of the bay, with its tides and winds, would probably be set on fire, by the accidental or negligent burning of the wharf, or by live coals thrown into the bay and coming in contact with the oil." *Stone* v. *B. & A. R. Co.*, supra. S. R. W.

POLICE REGULATION OF THE BUSINESS OF PLUMBING.—The constitutionality of a statute requiring plumbers to pass an examination before entering into that business has not been before the courts of this country many times. There has, however, been legislation on the subject in a number of the states, which has taken two forms; first, examination of the individual intending to carry on that occupation, thereby qualifying him to use his own discretion in the work; second, compelling anyone intending to do any plumbing work, to submit plans of the same to a board of plumbing inspectors, which shall examine and approve of them before the work can be done. A law of the latter sort was passed by the legislature of Iowa in 1907 and by that of New Jersey in 1888, neither having been seriously questioned as to constitutionality up to the present time. In a recent New Jersey case the court peremptorily dismissed the objection that such a law violated the rights of individuals in carrying on their business, saying simply that it was "manifestly without legal footing." *Board of Health of Asbury Park* v. *Hayes* (Oct. 1909), — N. J. —, 74 Atl. 339. The validity of the Iowa law was not questioned in a late case. *City of Des Moines* v. *Cutler* (Nov. 1909), — Ia. —, 123 N. W. 218. Regulations of this sort, viz., statutes providing that the *work itself* must be inspected and passed upon by inspectors appointed by law seem not to have been held invalid by any of the courts, but as to the validity of a law which provides that no *person* shall work at the business of plumbing, either as master plumber or journeyman plumber, until an examination by a board of examiners has been passed, the courts are not in accord. The objections advanced to such a law are principally that it contravenes the 14th amendment of the constitution and the right to engage in whatever occupation one desires, which latter was formulated as an inalienable right under the phrase "pursuit of happiness" in the Declaration of Independence. The principal question is whether the business of plumbing is so related to the health and welfare of the people that its regulation reasonably tends to protect the same. In *People ex rel. Nechamcus* v. *Warden*, 144 N. Y. 529, 39 N. E. 686, 27 L. R. A. 718, a bare majority of the court of appeals upheld the validity of the plumbing act of that state. Judge PECKHAM'S dissenting opinion has formed the foundation of many decisions which have since been rendered against the validity of such a law. A case arose in Washington recently in which the court reviewed nearly all the cases which have been decided on the point, and held that such a regulation was not constitutional, concurring in this opinion of Mr. Justice PECKHAM. *Richey* v. *Smith*, 42 Wash. 237, 84 Pac. 851, 5 L. R. A. (N. S.) 674. He said: "There must be more than the mere fact of the possible existence of some small amount of unhealthiness to warrant legislative interference with liberty. It is unfortunately true that labor, even in any department, may possibly carry with it the seeds of unhealthiness.